IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

Nos. 97-1390, -___

THE REPUBLIC OF PARAGUAY and
JORGE J. PRIETO, Ambassador of the Republic of Paraguay to the United States, and
JOSÉ MARÍA GONZALEZ AVILA, Consul General of the Republic of Paraguay to the United States,
Petitioners and Plaintiffs,

— v. —

JAMES S. GILMORE III, Governor of the Commonwealth of Virginia, *et al.*,
Respondents and Defendants.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
AND
ON MOTION FOR LEAVE TO FILE ORIGINAL COMPLAINT

REPLY TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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Dated: April 14, 1998

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REPLY TO THE BRIEF OF THE UNITED STATES AS AMICUS CURIAE

As the Solicitor General's brief makes clear, this case is precisely the kind of case that this Court was created to decide. The International Court of Justice has ruled 15-0 that the United States should "take all measures at its disposal to ensure that Angel Francisco Breard is not executed pending the final decision" in the proceedings instituted by Paraguay against the United States in that Court. The United States advises the Court that the Secretary of State has told the Governor of the

Commonwealth of Virginia that, in light of the ICJ Order, the "unique and difficult foreign policy issues" raised by the case, and "other problems created by the Court's provisional measures," the execution should be stayed. U.S. Br. at 46 & App. F.

According to the Solicitor General, "'measures at [the United States'] disposal' under our Constitution may in some cases include only persuasion." U.S. Br. at 51 (quoting ICJ Order; brackets in U.S. Br.). Hence, the Solicitor General advises that the Executive Branch is content to do no more than send the Secretary's letter, and then sit idly by while the Governor – who, the United States advises, turned down an earlier, similar request by the Secretary that could have avoided Paraguay's filing in the ICJ, U.S. Br. at 11 – determines whether he should adhere to the Secretary's new request. The Solicitor General invites the Court similarly to sit on the sidelines by denying Paraguay's requests for relief. Hence, according to the Solicitor General, the Governor of Virginia is now to determine whether the United States will comply with the ICJ Order.

In the face of the conflict in the Executive Branch, and the profound constitutional disorientation that would result if the question of compliance with an ICJ Order were left to the Governor of Virginia, this Court should grant the petition, the motion for leave to file the original complaint, and the accompanying motions for provisional relief, so that it may then decide, with both adequate time and adequate briefing, whether the United States will comply with or disregard the ICJ Order and the United States's obligations under the treaties involved in this case.

This Court plainly has the authority to decide these matters. *First*, the law of foreign relations and international obligations is quintessentially federal. *See United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 315-22 (1936) (because states never had sovereignty for foreign relations purposes, federal foreign relations authority is plenary).[1] *Second*, it is emphatically this Court's job to say what federal law is and to enforce that law against noncomplying state officials. *E.g., Marbury v. Madison*, 1 Cranch 137, 177 (1803); *Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958); *see also Jones v. Meehan*, 175 U.S. 1, 32 (1899) (interpretation of treaties "the peculiar province of the judiciary"). *Third*, the Framers gave this Court original jurisdiction over "Cases affecting Ambassadors, other public Ministers and Consuls" and federal courts jurisdiction in "Cases . . . arising under . . . Treaties," U.S. Const., art. III, § 2, specifically in order to prevent disputes such as this one from creating an

1. The breadth of federal authority in the area of international relations belies the suggestion by the United States that it is constitutionally incapable of enforcing compliance by state officials with federal law in the form of the United States's international obligations -- a proposition also flatly contradicted by the very brief in which the statement is made. U.S. Br. at 15 n.3 (citing *United States v. Arlington County*, 669 F.2d 925 (4th Cir.), *cert. denied*, 459 U.S. 801 (1982), to establish "the ability of the United States to sue in order to enforce compliance with the Vienna Convention"); *see United States v. City of Glen Cove*, 322 F. Supp. 149 (E.D.N.Y.), *aff'd on opinion below*, 450 F.2d 884 (2d Cir. 1971) (suit by United States to enjoin municipality from assessing taxes on property owned by foreign government); *see also Dames & Moore v. Regan*, 453 U.S. 654 (1981) (affording Executive Branch great latitude in effecting resolution of international dispute); *Asakura v. Seattle*, 265 U.S. 332 (1924) (enjoining enforcement of municipal ordinance in violation of treaty); *French v. Hay*, 89 U.S. (22 Wall.) 250 (1874) (enjoining enforcement of state judgment entered in violation of federal law).

international incident. Petition, No. 97-1390, at 25-29. *Finally*, as a matter of international law, the judiciary engages the United States' international responsibility as fully as does the executive. IAN BROWNLIE, STATE RESPONSIBILITY, Part 1, 144 (1983) ("The judiciary and the courts are organs of the state and they generate responsibility in the same way as other categories of officials."); *Report of the Int'l Law Comm'n*, U.N. GAOR, 51st Sess., Supp. No. 10, at 126, U.N. Doc. A/51/10 (1996) (Draft Articles on State Responsibility).

Particularly in light of the confusion in the Executive Branch, this Court should exercise its authority to decide both the original case filed by Paraguay and the case here on petition for certiorari. *First*, the Secretary of State's letter makes plain the weighty federal interest threatened by Virginia's noncompliance:

> I am particularly concerned about the possible negative consequences for the many U.S. citizens who live and travel abroad. The execution of Mr. Breard in the present circumstances could lead some countries to contend incorrectly that the U.S. does not take seriously its obligations under the [Vienna] Convention. The immediate execution of Mr. Breard in the face of the Court's April 9 action could be seen as a denial by the United States of the significance of international law and the Court's processes in its international relations and thereby limit our ability to ensure that Americans are protected when living or traveling abroad.

The Secretary's letter echoes the views expressed by Judge Stephen M. Schwebel of the United States, the President of the ICJ, when he wrote in his declaration explaining his vote in favor of the ICJ Order that

> The mutuality of interest of States in the effective observance of the obligations of the Vienna Convention on Consular Relations is the

> greater in the ~~intermixed~~ global community of today and tomorrow (and the citizens of no State have a higher interest in the observance of those obligations than the peripatetic citizens of the United States).

In light of these observations, there can be no question of both the national and international importance of the case.

Second, there should be no question that the determination of the United States' compliance or refusal to comply with the ICJ Order should be decided by a federal authority. The United States "sp[oke] with one voice," *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 451 (1979), when it undertook the obligations contained in the United Nations Charter, the Statute of the International Court of Justice, the Vienna Convention on Consular Relations, and its Optional Protocol. Equally, it should be an organ of the whole people, not of an individual state, that determines whether the United States will comply. *See United States v. Pink*, 315 U.S. 203, 231 (1942) ("the power of a State to refuse enforcement of rights [based on State policy considerations] . . . must give way before the superior Federal policy evidenced by a treaty or international compact or agreement"); *United States v. Belmont*, 301 U.S. 304, 324, 331 (1937) ("complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states").

Third, the Court's opportunity to make that determination with the attention it deserves should not be sacrificed to the rush to meet an arbitrary execution date set by Virginia some months ago. Paraguay recognizes the right of the

Commonwealth of Virginia and other competent authorities of the United States to prosecute and punish crimes within its jurisdiction, including its right to retry Mr. Breard if Paraguay prevails on its claims. Thus, the only interest at stake for Virginia if Paraguay's claims are denied is a delayed execution. By contrast, Paraguay faces the undoubted irreparable harm that an execution would cause, and the United States faces the harm to its status as a supporter of the rule of law in the world community that would result from a decision not even to consider with due deliberation the implications of Paraguay's claims and the possible consequences of disregarding of the ICJ Order.

Finally, separate and apart from the United States' interest generally in upholding the rule of law, the Court should consider the harm that would flow from a peremptory disregard *by this Court* of the ICJ Order. This Court, more than even the Secretary of State or other executive officials, will appreciate the harm to the rule of law, and to respect for judicial authority as the ultimate safeguard of the rule of law, of a decision by the United States, after agreeing to submit disputes under the Vienna Convention to the International Court of Justice, to refuse to effect compliance with an order of that Court in a case in which the United States has appeared, participated, and had a full opportunity to present its views.

It is critical to the rule of law for which the United States has stood since its founding that the ICJ's order be respected and implemented. Given the role of the United States in promoting the rule of law in the modern world, and the role of this

Court in promoting the rule of law in the United States, this Court should give effect to the ICJ Order, whether as a matter of treaty obligation or international comity.

CONCLUSION

For the foregoing reasons and for the reasons set forth in petitioners' previous submissions in No. 97-1390 and plaintiffs' previous submissions in No. 97-____, the Court should grant (1) the petition for writ of certiorari; (2) the application and supplemental application for a stay of or injunction against the execution of Paraguay's national, Angel Francisco Breard, now scheduled for April 14, 1998; (3) the motion for leave to file an original complaint; and (4) the accompanying motion for provisional relief halting the execution.

Dated: April 14, 1998

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Donald Francis Donovan, Counsel of Record for Petitioners in No. 97-1390 and Plaintiffs in No. 97-____, hereby certify under penalty of perjury that on April 14, 1998, I caused a copy of the Reply to the Brief of the United States as Amicus Curiae to be served by first-class mail of the United States Postal Service upon and sent a copy also by telecopy to

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Dated: April 14, 1998
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April 10, 1998

VIA EXPRESS MAIL

William K. Suter, Esq.
Clerk of the Supreme Court
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Republic of Paraguay v. Gilmore
(97-1390)

Dear Mr. Suter:

I enclose for filing the original and ten copies of the Republic of Paraguay's Supplmental Application for Stay of or Injunction against Execution in the above-referenced matter. We have enclosed ten copies because we understand that this application will be referred to the entire Court.

I also enclose one extra copy of the brief; I would appreciate your having this copy file-stamped and returned to me in the enclosed self-addressed, stamped envelope.

In the interest of time, this evening we had eleven fascimiles hand-delivered to the Court as courtesy copies. While the enclosed copies are identical in content to those delivered this evening, these conform to the Rules of the Court.

Thank you for your assistance.

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SUPREME COURT, U.S.

20525259.05

Sincerely yours,

Katherine Birmingham Wilmore

Katherine Birmingham Wilmore
(Awaiting admission)

Enclosures
cc: Donald R. Curry, Esq. (without enclosures)
Ara L. Tramblian, Esq. (without enclosures)
Seth P. Waxman, Esq. (without enclosures)
Paul Hoffman, Esq. (without enclosures)
Joseph D. Lee, Esq. (without enclosures)

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April 5, 1998

Mr. William K. Suter
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Supreme Court of the United States
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Republic of Paraguay, *et al.* v. Gilmore, *et al.*, No. 97-1390

Dear Mr. Suter:

On behalf of petitioners the Republic of Paraguay, Ambassador Jorge J. Prieto and Consul General José María Gonzalez Avila, we respectfully advise the Court that, on April 3, 1998, the Republic of Paraguay instituted proceedings in the International Court of Justice against the United States of America. Like its complaint in the District Court in this action, Paraguay's application to the ICJ alleges that Virginia officials violated the Vienna Convention on Consular Relations with respect to Angel Francisco Breard.

Also on April 3, 1998, Paraguay requested that the ICJ enter an order of provisional measures indicating that the United States ensure that Mr. Breard is not executed pending the ICJ's disposition of the case. The ICJ has scheduled a hearing on Paraguay's request for provisional measures for the morning of Tuesday, April 7, 1998. We understand that in letters dated April 3, 1998, the Vice President of the ICJ, Judge Christopher G. Weeramantry, has drawn the attention of the United States and Paraguay to the need "to act in such a way as will enable any Order the Court will make on the request for provisional measures to have its appropriate effects."

RECEIVED
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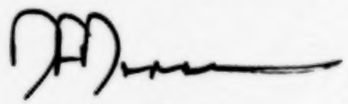
SUPREME COURT, U.S.

We have lodged with your Office under separate cover a copy of (a) the Application Instituting Proceedings Submitted by the Government of the Republic of Paraguay to the International Court of Justice, dated April 3, 1998; (b) the Request for the Indication of Provisional Measures of Protection Submitted by the Government of the Republic of Paraguay to that Court, dated April 3, 1998; and (c) the press release issued by the ICJ on April 3, 1998, reciting the action taken by the Vice President of the ICJ.

Respectfully submitted,



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April 5, 1998

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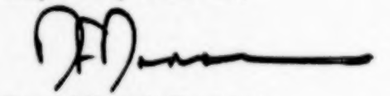
Republic of Paraguay, *et al.* v.
Gilmore, *et al.*, No. 97-1390

Dear Mr. Suter:

On behalf of petitioners the Republic of Paraguay, Ambassador Jorge J. Prieto and Consul General José María Gonzalez Avila, we respectfully enclose the following documents for lodging with the Court:

- The Application Instituting Proceedings Submitted by the Government of the Republic of Paraguay to the International Court of Justice, dated April 3, 1998;
- The Request for the Indication of Provisional Measures of Protection Submitted by the Government of the Republic of Paraguay to that Court, dated April 3, 1998; and
- The press release issued by that Court on April 3, 1998.

Respectfully submitted,



Donald Francis Donovan

Enclosures

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CASE CONCERNING THE VIENNA CONVENTION ON CONSULAR RELATIONS

(PARAGUAY V. UNITED STATES OF AMERICA)

APPLICATION INSTITUTING PROCEEDINGS SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY

TO: Mr. Eduardo Valencia-Ospina
Registrar
International Court of Justice
Peace Palace
The Hague
The Netherlands

Sir:

On behalf of the Republic of Paraguay and in accordance with article 40, paragraph 1, of the Statute of the Court and article 38 of the Rules of the Court, I respectfully submit this Application instituting proceedings in the name of the Government of the Republic of Paraguay against the Government of the United States of America for violations of the Vienna Convention on Consular Relations (done on 24 April 1963) (the "Vienna Convention"). The Court has jurisdiction pursuant to article I of the Vienna Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes.

Preliminary Statement

1. Article 36, subparagraph 1(b) of the Vienna Convention requires the competent authorities of a State Party to advise, "without delay," a national of another State Party whom such authorities arrest or detain of the national's right to consular assistance guaranteed by article 36. "[I]f he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that state is arrested or committed to prison or to custody pending trial or is detained in any other manner." *Id.*

2. As the Government of the United States stated in its Memorial in the *Case Concerning United States Diplomatic and Consular Staff in Tehran*:

> a principal function of the consular officer is to provide varying kinds of assistance to nationals of the sending State, and for this reason the channel of communication between officers and nationals must at all times remain open. Indeed, such communication is so essential to the exercise of consular functions that its preclusion would render meaningless the entire establishment of consular relations. Article 36 establishes rights not only for the consular officer but, perhaps even more importantly, for the nationals of the sending State who are assured access to consular officers and through them to others.

1980 I.C.J. Pleadings 174 (citations omitted).

3. In 1992, the authorities of the Commonwealth of Virginia, one of the federated states comprising the United States, detained a Paraguayan citizen named Angel Francisco Breard. Without advising Mr. Breard of his right to consular assistance, or notifying Paraguayan consular officers of his detention, as required by the Vienna

Convention, such authorities tried and convicted Mr. Breard and sentenced him to death.

4. These actions violated the obligations owed by the United States to Paraguay under the Vienna Convention. As a result of the breach, Paraguay is entitled to *restitutio in integrum*: the re-establishment of the situation that existed before the United States failed to provide the notifications and permit the consular assistance required by the Convention.

I. The Facts

Municipal Court Proceedings
Concerning Mr. Breard

5. On 1 September 1992, law enforcement authorities of Virginia arrested Mr. Breard on suspicion of murder. Although aware of Mr. Breard's Paraguayan nationality, the authorities at no time informed Mr. Breard of his rights to consular assistance under article 36, subparagraph 1(b) of the Vienna Convention. Nor did the authorities ever advise Paraguayan consular officers of Mr. Breard's detention. Unaware of, and not having been apprised of, these rights, Mr. Breard could not and did not exercise them before his trial.

6. Had Mr. Breard been properly informed of his rights under the Vienna Convention, he would have communicated with his Consul, seeking the assistance provided for in article 36. In turn, Paraguay would have rendered that assistance.

7. The failure to provide the notification required by the Vienna Convention thus precluded Paraguay from protecting its interests in the United States as provided for in articles 5 and 36 of the Vienna Convention. Among other things, Paraguay could not contact its national, assist in the defense of its national (as described in paragraphs 8 and 10 below), monitor the conditions of its national's detention, or

ensure that international legal norms were respected in the treatment of, and proceedings against, its national.

8. The failure to provide the required notification also precluded Paraguay from protecting its national's interests in the United States as provided for in articles 5 and 36 of the Vienna Convention. The authorities of Virginia effectively prevented Paraguayan consular officers from arranging for appropriate legal representation of Mr. Breard. Instead, the authorities themselves arranged for Mr. Breard to be represented by court-appointed counsel who were unfamiliar with Paraguayan culture and with the preconceptions concerning the criminal justice system that a Paraguayan national might be expected to have.

9. As a result of the lack of consular assistance, Mr. Breard made a number of objectively unreasonable decisions during the criminal proceedings against him, which were conducted without translation. He refused to accept the authorities' offer of life in prison in exchange for his pleading guilty to the crime. Instead, Mr. Breard insisted on risking a death sentence and confessing and denouncing his past criminal conduct at trial. Mr. Breard took these highly detrimental steps because - in the absence of advice from his consulate - he did not comprehend the fundamental differences between the criminal justice systems of the United States and Paraguay. Whereas Mr. Breard believed his confession and denunciation would appeal to the mercy of the American court, as he understood they would a court in Paraguay, in reality these acts virtually assured Mr. Breard's conviction and death sentence.

10. Consular assistance would have included advice on cultural and legal differences between Paraguay and the United States, including the desirability of accepting or rejecting plea offers in light of those differences; an interpreter; appropriate additional or other legal counsel; identifying and communicating with family members who could provide assistance and information; supplying records, documents, and other evidence helpful to Mr. Breard's defense; transport of family members and other witnesses to Virginia to provide testimony; attendance by consular officers at court or other proceedings; collecting

and presenting mitigating evidence at the sentencing phase; and other forms of assistance both legal and non-legal. Such consular assistance would have affected the result of the criminal proceeding against Mr. Breard, including any sentence imposed.

11. On 24 June 1993, Mr. Breard was convicted of murder. On 22 August 1993, the trial court imposed a death sentence. Mr. Breard's direct appeals of the conviction and sentence were denied, as was his petition to the state courts for a writ of *habeas corpus*, a collateral proceeding seeking relief from unlawful detention.

12. In the Spring of 1996, Paraguay, without benefit of information from the authorities of Virginia and the United States, finally learned that Mr. Breard was imprisoned in the United States and awaiting execution. Immediately upon learning of his situation, Paraguay, through its embassy and consulate, began rendering assistance, both legal and otherwise, to Mr. Breard. Until contacted by the Paraguayan consular representatives at that time, Mr. Breard had been entirely unaware of his rights under the Vienna Convention.

13. On 30 August 1996, with the assistance of Paraguayan consular officers, Mr. Breard took the final step available to him for challenging his conviction and sentence by filing a petition to the federal court of first instance for a writ of *habeas corpus*. For the first time, Mr. Breard claimed violations of the Vienna Convention. That court rejected the assertion of this and other claims based on a municipal law doctrine of "procedural default." *Breard v. Netherland*, 949 F. Supp. 1255 (E.D. Va. 1996). Applying this doctrine, the court decided that, because Mr. Breard had not asserted his rights under the Vienna Convention in his previous legal proceedings, he could not assert them in the federal *habeas* proceeding. This municipal law doctrine was held to bar such relief even though, first, Mr. Breard was unaware of his rights under the Convention at the time of the earlier legal proceedings, and second, he was unaware of his rights precisely because the local authorities failed to comply with their obligations under the Convention promptly to inform him of those rights. The intermediate federal

appellate court affirmed. *Breard v. Pruett*, 134 F.3d 615 (4th Cir. 1998). Mr. Breard's appeal to the intermediate federal appellate court was the last means of legal recourse in the United States available to him as of right.

14. In light of the federal appellate court's affirmance of the federal trial court's denial of Mr. Breard's *habeas* petition, the Virginia court that sentenced Mr. Breard has set an execution date of 14 April 1998. Absent intervention, officials of Virginia will then, in the words of the authorizing statute, "cause the prisoner under sentence of death to be electrocuted or injected with a lethal substance until he is dead." VA. STAT. ANN. § 53.1-234.

15. By petition for a writ of *certiorari*, Mr. Breard has now requested that the United States Supreme Court exercise its discretionary authority to review the lower federal courts' decision against him and grant a stay of his execution pending that review. The Supreme Court grants less than five percent of all *certiorari* petitions submitted to it. Moreover, in cases, such as Mr. Breard's, involving an imminent execution and submitted on an expedited basis, the Court frequently does not rule on the petition and accompanying request for interim relief until days, or even hours, before the scheduled execution.

Paraguay's Efforts To Secure
Relief In The United States

16. On 16 September 1996, the Republic of Paraguay filed its own civil lawsuit in a federal court of first instance against the municipal officials responsible for Mr. Breard's arrest, conviction, continuing imprisonment, and pending execution, alleging violations of the Vienna Convention. Paraguay sought, among other relief, an order vacating Mr. Breard's conviction, barring the municipal officials from taking any future actions based on that conviction, including refraining from putting Mr. Breard to death, and requiring those officials to afford Paraguay its

rights under the Convention in any future proceedings should Virginia, as Paraguay would expect, seek to prosecute Mr. Breard anew.

17. Paraguay did not seek from the federal court of first instance, and does not intend to seek from this Court, any relief barring the competent authorities of the United States from enforcing its criminal law or, specifically, retrying Mr. Breard if the competent authorities are so advised. Paraguay does contend, however, that the competent authorities of the United States must enforce the criminal law by means that comport with the obligations undertaken by the United States in the Vienna Convention.

18. On 27 November 1996, without having considered the merits of Paraguay's claim, the federal court of first instance held that it could not take jurisdiction of the case because it was barred by a municipal doctrine providing sovereign immunity to the several states that comprise the United States. *Paraguay v. Allen*, 949 F. Supp. 1269 (E.D. Va. 1996). Paraguay appealed the decision, which was affirmed. *Paraguay v. Allen*, 134 F.3d 622 (4th Cir. 1998). During the appellate proceedings, the United States took the position that although the Vienna Convention is of great importance to United States nationals abroad, the issue of its own violation of the Convention was not justiciable in the courts of the United States in an action brought by another State Party to the Convention.

19. Paraguay has filed a petition for a writ of *certiorari* in the United States Supreme Court seeking review of the appellate decision. As explained above, a petition for *certiorari* is a matter of the Supreme Court's discretion and is rarely granted.

20. In addition to its efforts to have its claim heard in the courts of the United States, Paraguay has also engaged in diplomatic efforts to gain the assistance of the United States in remedying the effect of the breach of the Vienna Convention. In a letter dated 10 December 1996, the Ambassador of Paraguay sought the good offices of the United States Department of State, "in order that a new trial may be granted

Paraguayan citizen Angel Breard within the framework of constitutional guarantees for proper defense against a criminal accusation as well as the strict fulfillment of the stipulations of international treaties covering acts of such nature." In a response delivered 3 June 1997, the Department of State expressed disagreement with Paraguay's legal position and offered no assistance to Paraguay in exercising its rights under the Treaties.

II. The Jurisdiction of the Court

21. Under article 36, paragraph 1 of the Statute of the Court, "[t]he jurisdiction of the Court comprises . . . all matters specially provided for . . . in treaties and conventions in force."

22. The Republic of Paraguay and the United States are, as members of the United Nations, parties to the Statute, and are parties to the Vienna Convention and to its Optional Protocol Concerning the Compulsory Settlement of Disputes. Article 1 of the Optional Protocol provides:

> Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

23. Paraguay therefore submits that, upon the filing of the present application, the matters in dispute between Paraguay and the United States concerning Paraguay's claims under the Vienna Convention lie within the compulsory jurisdiction of the Court.

III. The Claims of the Republic of Paraguay

24. The Government of the Republic of Paraguay claims that:

a. Pursuant to article 36, subparagraph 1(b) of the Vienna Convention, the United States is under the international legal obligation to Paraguay, a State Party to the Convention, to inform "without delay" any Paraguayan national, such as Mr. Breard, who is "arrested or committed to prison or to custody pending trial or is detained in any other manner" of his rights under that subparagraph. These rights include:

i. the right, if the national arrested or detained so requests, to have the competent authorities of the receiving State inform the local consular post of the sending State that that State's national has been so arrested or committed to prison or to custody pending trial or detained in any other manner;

ii. the right to have the competent authorities of the receiving State forward any communication "addressed to the consular post from the person arrested, in prison, custody or detention . . . without delay."

The United States has violated and is currently violating the foregoing obligations.

b. Pursuant to article 36, subparagraph 1(b) of the Vienna Convention, the United States is under the international legal obligation to an arrested national of Paraguay, such as Mr. Breard, to inform him "without delay" of his rights under that subparagraph. These rights include:

i. the right, if the national arrested or detained so requests, to have the competent authorities of the receiving State inform the local consular post of the sending State that that State's national has been

so arrested or committed to prison or to custody pending trial or detained in any other manner;

ii. the right to have the competent authorities of the receiving State forward any communication "addressed to the consular post from the person arrested, in prison, custody or detention . . . without delay."

The United States has violated and is currently violating the foregoing obligations with respect to Mr. Breard.

c. Pursuant to article 36 of the Vienna Convention, the United States is under the international legal obligation to ensure that Paraguay can communicate with and assist an arrested national prior to trial. Its failure to provide the notifications required by article 36, subparagraph 1(b) of the Vienna Convention has effectively prevented Paraguay from exercising its right to carry out consular functions pursuant to articles 5 and 36 of the Convention. The United States therefore has violated and is currently violating the foregoing obligation.

d. Pursuant to article 36, paragraph 2, of the Vienna Convention and article 26 of the Vienna Convention on the Law of Treaties (done on 23 May 1969), the United States is under an international legal obligation to ensure that its municipal law and regulations enable full effect to be given to the purposes of the rights accorded under article 36. The United States has violated and is currently violating the foregoing obligation.

e. Pursuant to article 27 of the Vienna Convention on the Law of Treaties and to customary international law, the United States may not derogate from its international legal obligation to uphold the Vienna Convention based upon its municipal law doctrines and rules, nor upon the basis that the acts in derogation are those of a subordinate organ or constituent or

judicial power. The United States has violated and is currently violating the foregoing obligation.

IV. The Judgment Requested

25. Accordingly, the Republic of Paraguay asks the Court to adjudge and declare:

(1) that the United States, in arresting, detaining, trying, convicting, and sentencing Angel Francisco Breard, as described in the preceding statement of facts, violated its international legal obligations to Paraguay, in its own right and in the exercise of its right of diplomatic protection of its national, as provided by articles 5 and 36 of the Vienna Convention;

(2) that Paraguay is therefore entitled to *restitutio in integrum*;

(3) that the United States is under an international legal obligation not to apply the doctrine of "procedural default," or any other doctrine of its internal law, so as to preclude the exercise of the rights accorded under article 36 of the Vienna Convention; and

(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against Angel Francisco Breard or any other Paraguayan national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1) any criminal liability imposed on Angel Francisco Breard in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) the United States should restore the *status quo ante*, that is, re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of Paraguay's national in violation of the United States' international legal obligations took place; and

(3) the United States should provide Paraguay a guarantee of the nonrepetition of the illegal acts.

V. JUDGE *AD HOC*

26. In accordance with the provisions of article 31 of the Statute and article 35, paragraph 1, of the Rules, the Republic of Paraguay declares its intention to exercise its right to name a judge *ad hoc*.

VI. RESERVATION OF RIGHTS

27. The Republic of Paraguay reserves the right to modify and extend the terms of this Application, as well as the grounds invoked.

VII. PROVISIONAL MEASURES

28. The Republic of Paraguay requests that the Court indicate interim measures of protection, as set forth in a separate request filed concurrently with this Application.

* *

I have the honor to reassure the Court of my highest esteem and consideration.

Brussels, 3 April 1998

His Excellency Manuel María Cáceres
Ambassador of the Republic of Paraguay to
the Kingdom of Belgium and the
Kingdom of the Netherlands

CASE CONCERNING THE VIENNA CONVENTION ON CONSULAR RELATIONS

(PARAGUAY V. UNITED STATES OF AMERICA)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES OF PROTECTION SUBMITTED BY THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY

Brussels, 3 April 1998

1. I have the honor to refer to the Application submitted to the Court this day instituting proceedings in the name of the Republic of Paraguay against the Government of the United States of America and to submit, in accordance with article 41 of the Statute of the Court and articles 73, 74, and 75 of the Rules of the Court, an urgent request that the Court indicate provisional measures to preserve the rights of the Republic of Paraguay. The Court has jurisdiction pursuant to article I of the Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention on Consular Relations.

2. The compelling facts underlying this request are set forth in the Application. On 1 September 1992, law enforcement officials of the Commonwealth of Virginia, one of the United States of America, arrested a national of Paraguay, Angel Francisco Breard. Mr. Breard was subsequently convicted and sentenced to death. At no time did these officials inform Mr. Breard of his right to communicate with his consulate, as required under article 36 of the Vienna Convention. Mr. Breard was and thus remained unaware of his rights under the Convention. As a result, Paraguay was not alerted to Mr. Breard's situation and was unable to exercise its right to render consular assistance until after he had already been tried, convicted, and sentenced.

3. Paraguay was therefore unable to protect its interests as provided for in articles 5 and 36 of the Vienna Convention. Similarly, it was unable to protect its detained national's interests as provided for in those articles.

4. As set forth in the Application, Paraguay submits that the actions of the Virginia officials, attributable to the United States, violated international legal obligations that the United States owes to Paraguay in its own right and in the exercise of its right of diplomatic protection of its national. As further set forth in the Application, Paraguay has requested that the Court declare that the United States has violated its obligations under the Vienna Convention; that the United States is obligated to restore the *status quo ante*; and that the United States is obligated to ensure that any future detention of or criminal proceedings against Mr. Breard or any other Paraguayan national in its territory be carried out in conformity with the international legal obligations the United States owes Paraguay.

5. By order dated 25 February 1998, the Circuit Court of Arlington County, Virginia, United States of America, has ordered that on **14 April 1998**, pursuant to Virginia Code § 53.1-234, Mr. Breard be electrocuted or injected with a lethal substance until he is dead.

6. The importance and sanctity of an individual human life are well established in international law. As recognized by article 6 of the International Covenant on Civil and Political Rights, every human being has the inherent right to life and this right shall be protected by law.

7. Under the grave and exceptional circumstances of this case, and given the paramount interest of Paraguay in the life and liberty of its nationals, provisional measures are urgently needed to protect the

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life of Paraguay's national and the ability of this Court to order the relief to which Paraguay is entitled: restitution in kind. Without the provisional measures requested, the United States will execute Mr. Breard before this Court can consider the merits of Paraguay's claims, and Paraguay will be forever deprived of the opportunity to have the *status quo ante* restored in the event of a judgment in its favor.

8. On behalf of the Government of Paraguay, I therefore respectfully request that, pending final judgment in this case, the Court indicate:

a. That the Government of the United States take the measures necessary to ensure that Mr. Breard not be executed pending the disposition of this case;

b. That the Government of the United States report to the Court the actions it has taken in pursuance of subparagraph (a) immediately above and the results of those actions; and

c. That the Government of the United States ensure that no action is taken that might prejudice the rights of the Republic of Paraguay with respect to any decision this Court may render on the merits of the case.

9. In view of the extreme gravity and immediacy of the threat that authorities in the United States will execute a Paraguayan citizen in violation of obligations the United States owes to Paraguay, Paraguay respectfully asks the Court to treat this request as a matter of the greatest urgency.

10. The Government of the Republic of Paraguay has authorized the undersigned to appear before the Court in any proceedings

or hearings relating to this request that the Court may convene in accordance with the terms of article 74, paragraph 3, of the Rules of the Court.

His Excellency Manuel Maria Cáceres
Ambassador of the Republic of Paraguay to
the Kingdom of Belgium and the
Kingdom of the Netherlands

International Court of Justice

Press Communiqué 98/13

3 April 1998

Paraguay brings a case against the United States of America and requests the indication of provisional measures Hearing to be held on Tuesday 7 April 1998

THE HAGUE, 3 April 1998. Paraguay today instituted proceedings against the United States of America before the International Court of Justice in a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963 with respect to the case of Mr. Angel Francisco Breard, a Paraguayan national convicted of murder in Virginia (United States) who is due to be put to death on 14 April 1998.

Paraguay maintains that Mr. Breard was arrested, tried, convicted and sentenced to death without Virginia advising him of his right to assistance by the consular officers of Paraguay, as required by the Vienna Convention. It furthermore contends that Paraguayan consular officers were never notified by the United States of the detention of Mr. Breard, learning of it through third parties more than two years after his trial and sentencing.

Accordingly, Paraguay asks the Court to adjudge and declare that the United States has violated its international legal obligations under the Vienna Convention and that Paraguay is entitled to "restitution in kind", that is, the re-establishment of the situation that existed before the United States failed to provide the required notification.

As a basis for the jurisdiction of the Court, Paraguay invoked Article I of the Vienna Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes. Both Paraguay and the United States are parties to the Vienna Convention and to the Optional Protocol, Article I of which provides that "disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice".

"In view of the extreme gravity and immediacy" of the case, Paraguay also filed today an urgent request for interim measures of protection (provisional measures), asking the Court to indicate that the United States should refrain from executing Mr. Breard before the Court could consider Paraguay's claims. It requested that a hearing be held at the earliest possible date.

In letters dated today, Vice-President Weeramantry, exercising the functions of the presidency in the case and acting in conformity with Article 74, paragraph 4, of the Rules of the Court, drew the attention of both Parties to "the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects".

He informed them that the Court would hold a public sitting on Tuesday 7 April 1998 at 10 a.m. to hear the observations of the Parties on the request for provisional measures.

Vice-President Weeramantry exercises the functions of the presidency in the case, President Schwebel being a national of the United States.

The full texts of the Application and of the request for the indication of provisional measures of Paraguay will soon be available on the Website of the Court (**http://www.icj-cij.org**).

NOTE FOR THE PRESS

1. The public sitting will be held in the Great Hall of Justice of the Peace Palace in The Hague, Netherlands. Mobile telephones and beepers are allowed in the courtroom **provided they are turned off or set on silent mode**. Any offending device will be temporarily retained.

2. Members of the Press will be entitled to attend on presentation of an admission card, which may be obtained upon application. The tables reserved for them are situated on the far left of the public entrance of the courtroom.

3. Photographs may be taken for a few minutes at the opening and at the end of the sitting. Television crews may film, but advance notice should be given to the Information Office (see paragraph 7).

4. In the Press Room, located on the ground floor of the Peace Palace (Room 5), the Court's proceedings will be relayed through a loudspeaker.

5. Members of the Press who wish to make telephone calls may use the phone located in the Press Room for collect calls or the public telephones in the Post Office in the basement of the Peace Palace.

6. Mr. Arthur Witteveen, Secretary of the Court (tel: 31-70-302 2336), and Mrs. Laurence Blairon, Information Officer (tel: 31-70-302 2337), are available to deal with any requests for information and for making arrangements for television coverage.

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